IN THE HIGH COURT OF HIMACHAL PRADESH SHIMLA

Cr,A No. 546 of 2000

Judgment reserved on: 28.9.2007.

Date of Decision: October 5, 2007.

State of H.P. … Appellant.

Versus

Jeet Ram … Respondent.

Coram:

The Hon'ble Mr. Justice Deepak Gupta, Judge.

Whether approved for reporting?

For the Appellant : Mr. R.K.Gautam, Sr.Advocate with Mr. Naveen Bhardwaj, Advocate.

For the Respondent : Mr. J.S.Gulelria, Law Officer.

Deepak Gupta, J.

This appeal is directed against the judgment of the learned Sub Divisional Judicial Magistrate Ist Class, Nalagarh in Criminal case No. 139/2 of 1997, decided on 9.5.2000 whereby he has acquitted the accused of having committed offences punishable under Sections 506 & 420 of the Indian Penal Code.

The accused is an Advocate. The prosecution case is that one Bimla Devi had lost her husband in an accident. She had filed a petition for grant of compensation under the Motor Vehicles Act before the Motor Accident Claims Tribunal at Ropar and had engaged one Mr. Gupta as her counsel. He expired and thereafter the complainant had engaged the respondent/accused as her

counsel. After the case was decided, an execution petition was filed. The Insurance Company deposited the amount. Accused along with the complainant went to Ropar and received some amount but he did not hand-over any amount to the complainant Bimla Devi. She thereafter complained to PW3 Nirmal Singh who along with other persons, namely, PW4 Yog Raj, PW5 Sikander and PW2 Ram Lal, went to the accused and asked him to pay the amount. Thereafter at the intervention of PW9 Shri Ram Swaroop Sharma, Advocate, Nalagarh, the accused returned a sum of Rs. 30,000/- to Yog Raj and promised to pay another sum of Rs. 17050/- but actually did not return the same. Thereafter the complainant sent a complaint Ex.P1 to the Chief Minister which was marked to the police. On the basis of this complaint, FIR Ex.PW4/A was registered. Investigation was conducted and after completion of the investigation, a challan was prepared and presented in Court. The accused was charged of having committed offences punishable under Section 406 and 420 IPC. He pleaded not guilty and claimed trial.

The statement of complainant itself is very confusing. The case of the prosecution is that an amount of Rs.47050/- was withdrawn from the account of Bimla Devi. This fact has been proved by Shri M.C.Jindal, Branch Manager of the Bank. He has stated that a sum of Rs.47,050/- on the basis of a withdrawal form Ex.PW7/A was handed over to Bimla Devi complainant herself. According to him, the amount was paid to Bimla Devi directly and she was identified on the basis of photograph and account number. Thus, it is clear that the amount was paid by the Branch

Manager to the complainant directly and not to the accused. This knocks the bottom of the case of the prosecution.

On the same day, Bhalo Devi, mother-in-law of the complainant had also gone to Ropar. She has admitted that she was paid a sum of Rs. 15000/- out of which a sum of Rs. 2000/- was retained by the accused and rest was paid to her. Bhalo Devi in her statement has not stated that Bimla Devi had handed over any amount to the accused and, if so, what was the amount. The statement of complainant is also very contradictory. In her statement, she has stated that the accused paid her Rs.25,000/- and then she stated that the accused had paid Rs. 22000/- and retained Rs. 14,000/-. From these two statements, it is not clear whether she received Rs. 25,000/- or Rs. 22,000/-. Furthermore, whether she received Rs. 25,000/- or Rs.22000/-, the accused could not have retained Rs. 47050/- with himself since this was the total amount admittedly released on that date.

The case of the prosecution is also that at the intervention of Shri Ram Swaroop Sharma, Advocate, the accused had agreed to pay a sum of Rs.30,000/- to the complainant. Shri Ram Swaroop Sharma, Advocate, has, however, totally denied this fact and there is no corroboration to the claim of the complainant that the accused had either agreed to pay Rs.30,000/-. In fact, the case of the prosecution is that the accused actually paid Rs. 30,000/-. This fact has also not been proved. Assuming for the sake of argument that Rs.30,000/- was paid then admittedly either Rs.25,000/- or Rs.22,000/- had already been received by her. This would mean that she has received either Rs.55,000/- or Rs.52,000/- as against

Rs.47,050/- released in her favour. Therefore, the question of paying another sum of Rs. 17050/- did not arise. There are so many contradictions in the prosecution case and the same cannot be believed. In fact, there is no proof that the amount was paid to the accused.

Keeping in view the aforesaid discussion, I am of the view that the judgment of the learned trial court calls for no interference. The appeal is dismissed.

October 5, 2007. (Deepak Gupta),J.

s.